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Washington, D.C. 20008

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

January 4, 2002

Dear Ms. Blue,

With regard to the Trade Policy Staff Committee's consideration of action on certain steel products under Section 203 of the Trade Act of 1974, the Brazilian Government would like to take this opportunity to present its views.

It is Brazil´s view that there should be no additional restrictions imposed on either imports of carbon and alloy flat-rolled products or on welded tubular products other than OCTG pursuant to section 203 of the Trade Act of 1974, as amended. The Government of Brazil believes that the record developed by the U.S. International Trade Commission ("ITC") in the investigation in this case fails to establish the necessary conditions, either under U.S. law or under the obligations of GATT 1994 and the International Agreement on Safeguards ("Safeguards Agreement"), for the imposition of restrictions on imports. In particular, there has not been a sufficient increase in imports of flat-rolled steel products to constitute a substantial cause of serious injury to the U.S.

industries involved. Moreover, there are a number of other aspects of the ITC's determination that do not meet the requirement of the Safeguards Agreement as that Agreement has been interpreted by authoritative panels of the World Trade Organization.

I. NO RESTRICTIONS SHOULD BE IMPOSED ON IMPORTS OF FLAT CARBON AND ALLOY STEEL PRODUCTS.

The record developed in the ITC's investigation pursuant to section 201 fails to establish the elements required for the imposition of restrictions under either United States law or the Safeguards Agreement. Both the United States legislation and the Agreement require imports in "increased quantities, absolute or relative to domestic production." Yet the record developed by the ITC shows that if imports of slab are excluded, imports of hot-rolled, cold-rolled, galvanized and plate products all declined, both absolutely and as a percentage of U.S. consumption, between 1998 and the present. For these products, at least, it is clear that the conditions for imposition of import restraints have not been met.

Even the importation of slab declined substantially in 2001, the most recent period used for determining injury. More importantly, the Commission's record makes clear that it is the U.S. steel mills that import slab, in order to operate at efficient capacity levels. Imports of slab assist the U.S. steel industry in competing both with U.S. minimills and with imports of finished products. The ITC also recognized that the U.S. industry will continue to need significant quantities of slab (7 to 8 million tons per year) to remain competitive. These imports cannot possibly be injuring the U.S.

industry. Indeed, imports of slabs are part of the problem of the US steel industry but rather part of the solution.

Finally, it is important to point out that the ITC itself has provided reliable evidence that no amount of import restraints is likely to overcome the woes of the U.S. industry. According to the models it developed in its COMPAS analysis, as well as the models developed by the U.S. steel industry, even the imposition of the most severe remedy possible - 40 to 50 percent tariffs on all steel products - would have only a minuscule impact on domestic prices. The virtual exclusion of imports implied by these remedies thus would only assure that U.S. producers sell more products at a loss, deepening their financial plight rather than restoring them to profitability.

II. THE ITC DECISION IS INCOMPATIBLE WITH NUMEROUS BASIC REQUIREMENTS OF THE INTERNATIONAL AGREEMENT ON SAFEGUARDS.

The Government of Brazil believes that the ITC's determination in this case is incompatible with several very basic requirements of the Safeguards Agreement. The starting point for ITC's affirmative finding on flat-rolled products was the determination that there exists a single "like product" for all "flat-rolled" products, including slab, plate, hot-rolled, cold-rolled, galvanized and tin-plate. No evidence, however, was provided to suggest that these very different products can be considered a single like product. As the WTO Appellate Body found in *United States -- Lamb Meat*:

> In our view, under Article 4.1(c), input products can only be included in defining the "domestic industry" if they are "like or directly competitive" with the end products. If an input and an end-product are not "like or "directly competitive," then it is irrelevant, under the *Agreement on*

> *Safeguards*, that there is a continuous line of production between an input and an end-product, that the input products represents a high proportion of the value of the end-product, or that there is a substantial coincidence of economic interest between the producers of these products.[1]

Under this ruling, it is wrong for the ITC to consider slab to be "like or directly competitive" with any finished flat-rolled product. It is also unlikely that hot-rolled steel would be like or directly competitive with galvanized steel or cold-rolled steel. The ITC's finding of a single like product category and single domestic industry comprising all flat-rolled products is wrong as a matter of law. Actually these products are physically different, and, in the case of slabs, they are not even a "rolled" products, being produced by casting from liquid steel, and made on different equipment. They serve different customer bases (slab customers are U.S. mills, which use them to compete with imported finished products), are priced differently, and serve different uses.[2]

Once it is seen that there are multiple like products, the Commission's finding that imports were "increasing" is unsustainable.. In all finished products, imports have decreased substantially since 1998, both absolutely and in terms of market share.

The Commission's decision also fails to consider the extent to which other factors are more important causes of injury than imports, as required by both US law and the

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[1] *United States -- Lamb Meat*, WT/DS/177/AB/R, WT/DS/178/AB/R, para. 90.

[2] The Commission made no finding as to any of these characteristics, which it normally uses to determine whether products fall within a "like product" category. The Commission's sole finding was that the various products are often produced by "many" of the same companies, and that the products' prices move in tandem. *Determinations and Views of the Commissioners,* Inv. No. TA-201-73 (Dec. 2001) at 38, 40. The Commission's finding that slab is part of the same like product as finished products is particularly unsubstantiated given the fact that the Commission found that billets -- the long products equivalent of slab -- constitute a different like product from finished long products. *Id.*

Safeguards Agreement[3]. The US Government has admitted in the course of the recent High Level Meeting on Steel Issues at the OECD that such factors as increased low-cost US minimill capacity, inefficient US integrated mill capacity, industry fragmentation and huge legacy costs are principally responsible for the US steel industry's financial condition. Given the importance of these factors, it is not credible to assert that imports of flat-rolled products, which have either declined or remained stable since 1998[4], could be a cause which is "not less {important} than any other cause"[5] in injuring the US industry.

Hence, in at least three critical respects, the Commission's determination fails to meet the standards required by the Safeguards Agreement for imposing import protection. The Government of Brazil believes that the final decision should not compound these errors by restricting imports.

III. THE EXISTENCE OF DUMPING AND COUNTERVAILING DUTIES THAT EFFECTIVELY PRECLUDE IMPORTS SHOULD BE TAKEN INTO ACCOUNT.

The ITC has recommended the imposition of flat tariffs of 20 percent or more on all finished products. Yet the ITC has failed to take into account the fact that many of these products are subject to antidumping and countervailing duty orders that substantially limit the ability of many significant export sources to participate in the U.S. market. It makes no sense to impose tariff restrictions on goods that are already subject to substantial duties. On the contrary, imposing tariffs, even small tariffs, on top

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[3] Section 201(a) of the Trade Act of 1974 requires that imports be a "substantial cause" of injury, and section 202(b)(1)(B) defines substantial cause as "a cause which is important and not less than any other cause." Article 4.2(b) of the Safeguards Agreement prohibits a party from attributing to imports injury that is caused by "factors other than increased imports."

[4] The Commission also ignored the fact that in three of four finished flat-rolled product categories, imported products were priced higher than domestic products in 2001. ITC report at 64.

of existing antidumping and countervailing duties would effectively embargo imports of finished steel products into the U.S.

As a result of antidumping and countervailing duty orders, Brazil has seen its exports to the U.S. cut by more than 80%. As a result of an antidumping suspension agreement it reached with the Commerce Department, Brazil has seen its exports of hot-rolled steel drop to ZERO since mid 2000. Numerous other export sources, including Japan, Korea, Russia, Ukraine, and the countries of the European Union (among others) are also similarly restricted. Given such restrictions, import quantities of finished steel products have dropped significantly, and are not likely to resume historical levels. It makes no sense to impose tariffs upon imports for countries already subject to import restraints.

The imposition of tariffs on goods already subject to antidumping and countervailing duties effectively prevent these countries from exporting to the U.S. This is because the normal response to tariffs is for exporters to lower their prices somewhat, in order to absorb part of the cost of the additional tariff. However, to the extent that exporters are subject to antidumping duty orders, they would effectively be prohibited from absorbing those costs, because lowering their prices would only result in higher dumping duties. Thus, the effect of a "duty on a duty" (section 201 tariffs in addition to antidumping duties) would effectively be to preclude these exporters from participating in the U.S. market at all.

There is no justification for imposing section 201 tariffs on top of antidumping or countervailing duties.

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[5] Section 202(b)(1)(B).

IV. NO RESTRICTIONS SHOULD BE IMPOSED ON IMPORTS OF WELDED TUBULAR PRODUCTS OTHER THAN OCTG

Regardless of the result of the President's application of Article 9.1 of the WTO Agreement on Safeguards, imports of certain welded large-diameter line pipe (welded LDLP), which are included within the larger product category of welded tubular products, other than OCTG (welded non-OCTG), should not be subject to any restrictive remedy. These products are described as follows:

> "High-specification large-diameter welded line pipe, API grades X65 and X70, 18" and greater in outside diameter, with wall thickness 0.562" and greater."

It is Brazil´s view that these products should be not be subject to any restrictive measure primarily because a substantial majority falls within the range of products that, at the request of the U.S. line pipe industry, the Commerce Department excluded from its recently concluded antidumping investigations on welded LDLP from Japan and Mexico. The U.S. industry has continued to support that no remedy be applied to such products, both at the ITC remedy hearing and in submissions to USTR. The position of the U.S. industry was cited by the ITC as a major factor influencing its decision to exclude these products from its recommended remedy for welded non-OCTG.

The U.S. industry's request for exclusion of these products creates the obvious inference that it does not produce these products. In fact, the ITC's decision to exclude these products was based in part on its conclusion that the products are unavailable from the U.S. industry. Clearly, there is no reason to place any import-restraining remedy on products that the U.S. industry does not produce. In fact, imposition of such

restraints would be counterproductive in that they would harm severely U.S. downstream industries, U.S. consumers, and the U.S. economy in general.

With regard to the small portion of those products described above that Commerce did not exclude from the antidumping investigations and which the ITC did not exclude from its recommended remedy, such products should nonetheless be excluded because U.S. mills simply do not have enough capacity to supply current U.S. demand for welded LDLP. In that regard, it is noteworthy that, in the context of substantially similar exclusion requests, U.S. purchasers of welded LDLP, such as BP America, the Williams Companies, Coflexip Stena Offshore, and Shell Exploration and Production, have demonstrated that the welded LDLP products for which exclusion is requested cannot be produced domestically by any U.S. manufacturer and should therefore be excluded from any remedy.

Further, it is also important to bear in mind that Brazil ships these products almost exclusively to companies in the energy sector of the U.S. economy. Trade restrictions on these products would make it difficult for U.S. firms to expand domestic oil and gas production, particularly in the Gulf environment, increasing the dependence of the United States on foreign oil supplies at a time of increased instability in foreign oil-producing regions.

Second, due consideration should be given to Article 9.1 of the WTO Agreement on Safeguards. Under this provision, if the most recent period is examined, imports of welded tubular products, other than OCTG, from Brazil should be exempt from any remedy. During the period January 2000 through June 2001, imports of welded tubular

products, other than OCTG, from Brazil were 0.07 percent of total imports. Under Article 9.1, because imports from Brazil are under 3 percent of total imports, no safeguards remedy may be imposed on such imports. Moreover, during the period January 2000 through June 2001, imports of welded tubular products, other than OCTG, from countries that individually constituted less than 3 percent of total imports during that period were 8.2 percent of total imports. Under Article 9.1, because imports from these countries are under 9 percent of total imports, no safeguards remedy may be imposed on such imports when considered individually.

V. THE ITC DETERMINATION ON TIN MILLS PRODUCTS WAS EFFECTIVELY A NEGATIVE DETERMINATION

Four of the six ITC Commissioners determined that tin mill products were a different like product than other flat rolled products. Of these four, three made a negative determination. The other two ITC Commissioners made an affirmative determination on tin mill products by including this category in the broad flat rolled product category. Thus, in effect, the ITC did not make a negative determination on this product. As such, the U.S. should not impose import relief on this product.

Should you have additional questions, please contact Mr. Aluisio de Lima-Campos of this Embassy, at (202) 238-2767 or acampos@brasilemb.org.

Sincerely,

ROBERTO JAGUARIBE
Chargé d'Affaires